

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: CLAUSSEN FAMILY FARM, L.L.C. Facility ID #64989 Scott County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2007-AFO- 08
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TO: Dale Claussen ✓ Claussen Family Farm, L.L.C. 1150 Carriage Place Bettendorf, Iowa 52722	Curt A. Oppel, Registered Agent Claussen Family Farm, L.L.C. 900 US Back Center Davenport, Iowa 52801
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I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Claussen Family Farm, L.L.C. (Claussen) for the purpose of resolving the issues surrounding a manure discharge at the Claussen facility and the resulting fish kill. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:
Josh Sobaski, Field Office #6
Iowa Department of Natural Resources
1023 West Madison
Washington, Iowa 52353
Phone: 319/653-2135

Relating to legal requirements:
Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or 2005 Iowa Code Supplement Chapter 459A and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Claussen owns a swine and cattle operation located at 24120 205th Street, LeClaire (SE ¼ of the NW ¼ of Section 31, LeClaire Township, Scott County). The facility consists of a hog confinement with deep pit manure storage basins and an open cattle feedlot with concrete manure storage basins. The capacity of the open cattle feedlot is over 500 head.

Current Violations:

2. On August 30, 2006, DNR Field Office 6 received an anonymous complaint alleging that there were dead fish and a manure odor in Conduit Creek (a tributary of Spencer Creek) that runs through the Davenport Country Club near Pleasant Valley in Scott County.

3. On August 30, 2006, Josh Sobaski and Ryan Stouder, DNR Field Office 6 environmental specialists, investigated the complaint. They began the investigation at the maintenance shop at the Davenport Country Club and met with a country club employee who stated the water in Conduit Creek had a manure odor downstream from the maintenance shop. The DNR Field Office 6 staff collected numerous samples in areas around the country club as well as areas near the Claussen facility. The results of the samples are as follows:

Field Samples

Location	NH3	Temperature	pH	Dissolved Oxygen	Water Condition
#202-Conduit Creek, down gradient of the Claussen facility	>3 mg/l	72 F	8	<1 mg/l	Manure Odor
#204-Conduit Creek, down gradient of the Claussen facility	>3 mg/l	*	*	*	Manure Odor
#205-Confluence of Spencer Creek, the receiving stream from the flow of Conduit Creek	1.4 mg/l	74 F	7-8	2 mg/l	Manure Odor
#206-Flow along Spencer Creek up gradient of the Conduit Creek Confluence	0.4-0.5 mg/l	72 F	7	>10 mg/l	No odor
#207-Flow along Spencer Creek down gradient of the Conduit Creek Confluence	1 mg/l	78 F	7	10 mg/l	No odor
#219-Conduit Creek, down gradient of the Claussen facility	0.3 mg/l	70 F	6	10 mg/l	*

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#227-Conduit Creek, down gradient of the Claussen facility	0.2 mg/l	72 F	7	10 mg/l	*
#229-Conduit Creek, down gradient of the Claussen facility	> 3 mg/l	74 F	7	0-1 mg/l	*
#235-Conduit Creek, down gradient of the Claussen facility	> 3 mg/l	72 F	7	0 mg/l	*
#240-Conduit Creek, down gradient of the Claussen facility	0.5 mg/l	70 F	6	10 mg/l	*
#246-Conduit Creek, down gradient of the Claussen facility	0.3 mg/l	72 F	6	10 mg/l	*
#252-Conduit Creek, down gradient of the Claussen facility	> 3 mg/l	72 F	6	0 mg/l	*
#254-Conduit Creek, down gradient of the Claussen facility	0.3 mg/l	72 F	6	10 mg/l	Scum in water
#258-Conduit Creek, down gradient of the Claussen facility	0.3 mg/l	*	*	*	Scum
#260-Conduit Creek, down gradient of the Claussen facility	0.3 mg/l	*	*	*	*
#261-Conduit Creek, down gradient of the Claussen facility	> 3 mg/l	68 F	6	0 mg/l	*
#263-Up gradient of the Confluence of a grass waterway with a ditch along Conduit Creek down gradient of the Claussen facility	0 mg/l	68 F	7	10 mg/l	*
#265-Conduit Creek, down gradient of the Claussen facility	>3 mg/l	68 F	6	6 mg/l	*
#266-Grass waterway down gradient of Claussen facility	>3 mg/l	72 F	7	0 mg/l	Contained raw liquid manure
#267-Conduit Creek, down gradient of the Claussen facility	>3 mg/l	72 F	6	0-1 mg/l	*
#270-Conduit Creek, down gradient of the Claussen	2.4 mg/l	68 F	6	3 mg/l	9/1/06

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facility					
#272-Up gradient of the Confluence of a grass waterway with a ditch along Conduit Creek down gradient of the Claussen facility	0 mg/l	66 F	6	7 mg/l	9/1/06

Laboratory Samples

Location	BOD	NH3	TSS	pH	Fecal Coliform
#205	37 mg/l	3.1 mg/l	37 mg/l	7.8	120,000/100 ml
#206	<2 mg/l	0.13 mg/l	9 mg/l	8.4	1600/100 ml
#207	9 mg/l	.9 mg/l	27 mg/l	8.1	26,000/100 ml
#235	410 mg/l	28 mg/l	61 mg/l	7.5	1,000,000/100 ml
#267	13 mg/l	2.2 mg/l	220 mg/l	7.8	210,000/100 ml
#270	4 mg/l	1.4 mg/l	9 mg/l	8.1	17,000/100 ml
#272	<2 mg/l	.11 mg/l	5 mg/l	8.2	<1000/100 ml
#274-Grass waterway down gradient of Claussen facility; contained raw liquid manure	11,000 mg/l	880 mg/l	27,000 mg/l	7.1	37,000,000/100 ml

Mr. Sobaski and Mr. Stouder's investigation led them to the Claussen facility. Mr. Claussen stated there had been a manure overflow. During their inspection of the Claussen facility, they observed a concrete open feedlot runoff control structure that was full of liquid manure with evidence of manure overflow outside of the concrete walls of the structure. The field office staff did not observe any other runoff control structures down gradient of the concrete structure. The field office staff followed the path of manure from the manure structure to a waterway. The waterway was between the manure structure and Conduit Creek and was full of liquid manure.

4. On October 10, 2006, a Notice of Violation letter was issued to Claussen for the water quality violations caused by the manure discharge from its facility. The letter included a copy of the inspection report and sample results. Claussen was informed the matter was being referred for formal enforcement.

5. The fish kill evaluation by Fisheries staff concluded that 6,092 fish valued at \$900.15 were killed. The costs of performing this evaluation were \$650.97. The total fish kill assessment totals \$1,551.02.

Past History:

6. On August 26, 2002, DNR Field Office 6 received a complaint about a fish kill in Spencer Creek near Pleasant Valley in Scott County. DNR Field Office 6 investigated the complaint and determined manure runoff from the Claussen facility caused the fish kill.

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7. On October 8, 2002, Claussen was issued a Notice of Violation letter citing the water quality and manure discharge violations. Claussen was required to take immediate action to prevent further manure discharges from the facility, to contact the Natural Resources Conservation Services (NRCS) to perform an assessment of the facility to determine an appropriate waste management system, to notify the field office with the results of the assessment and to submit to the field office by November 11, 2002 a plan to prevent further discharges.

8. On December 2, 2002, Claussen submitted the results of the NRCS assessment to the field office. The assessment recommended that Claussen construct an earthen sediment basin below the existing concrete sediment basin and to install a perforated tile intake and filter strip. The field office did not receive written confirmation from Claussen that any of the recommendations were completed and the field office did not see any evidence of the recommendations being completed during the August 2006 investigation.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. Inasmuch as no such permit had been issued for this facility at the time of the above-summarized discharges, the foregoing facts establish that these provisions have been violated.

2. 567 IAC 61.3(2)"b" provides general water quality criteria and states all surface waters shall be free from floating debris, oil, grease, scum and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to create a nuisance. Manure runoff from the Claussen facility flowed into Conduit Creek causing scum and floating debris in Conduit Creek. The above-facts disclose a violation of this provision.

3. 567 IAC 61.3(2)"c" provides general water quality criteria and states all surface waters shall be free from substances attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions. Manure runoff from the Claussen facility flowed into Conduit Creek causing a manure odor and a fish kill. The above-facts disclose a violation of this provision.

4. 567 IAC 61.3(2)"d" provides general water quality criteria and states all surface waters shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations or combinations which are acutely toxic to human, animal, or plant life. Manure runoff from the Claussen facility flowed into Conduit Creek causing high levels of fecal coliform, BOD, TSS, and ammonia. The runoff also caused a fish kill. The above-facts disclose a violation of this provision.

5. 567 IAC 65.101(9) requires any person storing, handling, transporting, or land applying manure, process wastewater, open feedlot effluent, settled open feedlot effluent or

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settleable solids from an open feedlot operation who becomes aware of a release to notify the Department of the release as soon as possible, but not later than six hours after the onset or discovery of the release. The foregoing facts indicate that this provision has been violated.

6. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC chapter 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the manure discharge at the Claussen facility.

V. ORDER

THEREFORE, it is hereby ordered and Claussen agrees to do the following:

1. Claussen shall submit a Plan of Action for the improvement and maintenance of the manure controls at the facility to DNR Field Office 6 within 60 days of the date the Director signs this administrative consent order;
2. Claussen shall install and maintain manure control structures in accordance with the Plan of Action at the facility and shall notify DNR Field Office 6 within 10 days of completion of the manure control structures;
3. Claussen shall pay restitution in the amount of \$1,551.02 within 30 days of the date the Director signs this administrative consent order; and
4. Claussen shall pay a penalty of \$4,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191, and 2005 Iowa Code Supplement section 459A.502, authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$5,000.00. The administrative penalty is determined in accordance with the following:

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Economic Benefit – Failure to properly contain all manure has allowed Claussen to save time and money. By failing to install adequate manure storage structures and failing to timely apply the manure, Claussen has gained an economic benefit of at least \$750.00. Therefore, \$750.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Actual harm to the environment was documented by visual and olfactory observation of impact to Conduit Creek, including dead fish. It was estimated that 6,092 fish were killed. The water quality violations threaten the integrity of the water quality program. Based on the above considerations, \$2,000.00 is assessed for this factor.

Culpability – Claussen has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that the facility's conduct is subject to DNR's rules. Additionally, Claussen has a documented fish kill in the past and failed to install recommended manure control structures. Claussen failed to maintain enough manure storage so that the runoff did not cause water quality violations. Based on the above considerations, \$1,250.00 is assessed for this factor.


VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Claussen. For that reason, Claussen waives the right to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.

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DIRECTOR
Iowa Department of Natural Resources

Dated this 26 day of
March, 2007.



For CLAUSSEN FAMILY FARM, L.L.C.

Dated this 7 day of
March, 2007.

#64989; Kelli Book; Josh Sobaski; Kenneth Hassenius; Gene Tinker; Marion Conover; EPA;
VIII.D.1.b, VIII.D.3.a